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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MARK D. KLEINSASSER,

7 Plaintiff,

8 v.

9 PROGRESSIVE DIRECT INSURANCE
COMPANY and PROGRESSIVE MAX
INSURANCE COMPANY,

10 Defendants.

CASE NO. C17-5499 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION

11 This matter comes before the Court on Plaintiff Mark Kleinsasser's ("Plaintiff")
12 motion for reconsideration (Dkt. 41).

13 On October 10, 2017, the Court set an evidentiary hearing on Plaintiff's motion to
14 remand and requested additional briefing and, if necessary, additional evidence. Dkt. 34.
15 On October 17, 2017, Plaintiff filed a motion for reconsideration on the merits. Dkt. 36.
16 On October 19, 2017, the Court denied the motion. Dkt. 37. On November 10, 2017,
17 Plaintiff filed a second motion for reconsideration on the procedural aspect of holding an
18 evidentiary hearing with live testimony. Dkt. 41.

19 Plaintiff argues that the issue should be decided similar to a summary judgment
20 motion without live testimony. *Id.* When considering a summary judgment motion, the
21 Court takes all facts and inferences in favor of the non-moving party. *Anderson v.*
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1 *Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (“at the summary judgment stage the
2 judge’s function is not himself to weigh the evidence and determine the truth of the
3 matter but to determine whether there is a genuine issue for trial.”). In contrast, when
4 resolving a motion to remand “the district court must make findings of jurisdictional fact
5 to which the preponderance standard applies.” *Dart Cherokee Basin Operating Co. v.*
6 *Owens*, 135 S. Ct. 547, 552 (2014), 135 S. Ct. 547, 554 (citing H.R.Rep. No. 112–10, p.
7 16 (2011)). Accordingly, the Court will accept live testimony subject to cross
8 examination to resolve the conflicting facts proffered by the parties in this case. Neither
9 the Court nor Plaintiff has discovered binding precedent on this issue. While holding an
10 evidentiary hearing may be error, Plaintiff has failed to show that it would be manifest
11 error. Plaintiff has sufficient time to seek a writ of mandamus if he so desires.
12 Otherwise, the Court finds that it is in the interest of all parties to fully develop the record
13 and enter findings of fact for appeal, as opposed to entering findings of fact based solely
14 on the record, only to have the matter sent back for an evidentiary hearing after appeal.
15 Therefore, the Court **DENIES** Plaintiff’s motion for reconsideration.

16 **IT IS SO ORDERED.**

17 Dated this 13th day of November, 2017.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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